IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VICTORIA JOHLE and
MIKAELA JOHLE,

Plaintiffs,

vs. No.

THE UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Plaintiffs say:

1. The claims against the Defendant United States of America arise under the Federal Tort Claims Act, 28 USC §1346 (b) and 2671 et seq.

2. Timely administrative claims were submitted to the United States Department of Health and Human Services, Indian Health Service, Navajo Area Health Service, Crownpoint Indian Health Service, Northern Navajo Medical Center, and Tuba City Regional Health Care Corporation. The Department of Health and Human Services denied the claims less than 6 months ago.

3. At all times relevant to this lawsuit, the Defendant owned, operated and managed the Indian Health Service and its related offices and employed the health care providers treating Victoria Johle at Crownpoint Indian Health Services (in New Mexico), Northern Navajo Medical Center (in New Mexico), and Tuba City Regional Health Care Corporation (in Arizona).

4. Indian Health Service and its related offices are part of the Department of Health and Human Services, which is an agency of the Defendant United States of America.

5. Victoria Johle (Victoria) is a Navajo tribal member and lives in New Mexico. Mikaela Johle (Mikaela) is Veronica's daughter, lives with her, and has a mutually interdependent relationship with her.

6. On or about July 15, 2010, Victoria was sitting on a rolling stool, and when she started to push off to move the stool to a different location, she felt a pop in her left foot. She began to have pain and swelling and she went to the Crownpoint Indian Health Services Clinic in Crownpoint New Mexico. She saw a federal employee there, working within the scope of the employment, who noted pain in her left foot and ankle and diagnosed her as having an ankle sprain. She continued to be followed there, mostly by Dr. John Johnson.

7. On August 13, 2010, Victoria went to Northern Navajo Medical Center for her continuing left ankle and foot pain, where she was seen by another federal employee working within the scope of the employment who ordered an x-ray on 8/13/10, initially read as showing no fracture by Andrew Wasserberg, a federal employee working within the scope of the employment. Later, Victoria was called by a federal employee working within the scope of employment who told her that the x-rays showed fractures in her left foot. Dr. Angeligue Pflueger, apparently a radiologist, a federal employee working within her scope of employment, had reviewed the film and read it as showing an apparent fracture-subluxation of the naviculocuneiform joints.

8. Victoria was sent to Dr. Raymond DuRussel on August 18, 2010, apparently a podiatrist, and federal employee working within the scope of his employment and Chief of Podiatry at Northern Navajo Medical Center. Dr. DuRussel ordered more x-rays, which were read by Dr. Brian Demby, a federal employee working within the scope of his

employment, which were read as showing a navicular fracture and fracture-subluxation of the naviculocuneiform joints.

9. On August 19, 2010 Dr. DuRussell diagnosed Victoria with a Lis-Franc fracture of the left foot and fracture dislocation of the left navicular. He told Victoria that she should either get surgery or be crippled for life.

10. On August 20, 2010, Dr. DuRussel performed an open reduction with internal fixation of Victoria's so-called navicular fracture and open reduction of the cuneiform and navicular mid-foot so-called Lis-Franc fracture.

11. Victoria did poorly after the surgery, and Dr. DuRussel operated again on October 27, 2010 to "replace proud screw with shorter screw and tighten all screws as needed left foot internal fixation." Victoria continued to do poorly, and it was suspected that she had developed a stress fracture in her right foot from excess weight bearing on it since the surgery on her left foot.

12. Victoria got a second opinion from Dr. Keith A. Goss, a federal employee working within his scope of employment, who was apparently a podiatrist located at the Tuba City Regional Healthcare Center who made monthly visits to Crownpoint Indian Health Services. She was seen at the Crownpoint Indian Health Services Clinic by Dr. Goss on June 6, 2011. Dr. Goss thought that Dr. DuRussel had misdiagnosed Victoria, and that she really had a Charcot arthropathy in the left foot instead of the earlier diagnoses. Dr. Goss and Dr. Justin Faul, apparently a podiatrist and another federal employee working within the scope of his employment, operated on Victoria on July 26, 2011 at the Tuba City Regional Healthcare Corporation and removed the hardware installed by Dr. DuRussel and placed external fixators.

13. Victoria continued to do poorly and received additional treatment from Dr. Goss. She was found to have osteomyelitis and, among other things, Dr. Goss wrapped her ankle very tightly with something like an Ace bandage. On October 24, 2011, Victoria's mother unwrapped her foot because she had severe pain, and noted her foot looked and smelled awful. Victoria's mother drove her to Crownpoint Indian Health Services. After examination in the emergency room, she was flown to Tuba City Regional Healthcare Corporation where Dr. Faul amputated her left foot. After her amputation she was allowed to fall in the hospital and was discharged without transfer to an appropriate skilled nursing facility and without assistive devices.

COUNT I

14. Victoria realleges paragraphs 1 through 13.

15. During the course of treatment of Victoria, health care employees of the Defendant, while working within the scope of their employment, failed to possess, to apply, and to use the knowledge, skill and care of similar, reasonably well qualified health care providers, in similar circumstances, giving due consideration to the locality involved. Some of their negligent acts and omissions include, but are not limited to the following:

a. Incorrectly diagnosing a Lis-Franc fracture and Charcot foot.

b. Failing to assess Victoria's overall health and controlling her diabetes and obesity to improve her wound-healing ability and/or improperly scheduling surgery.

c. Performing contra-indicated surgeries.

d. Incorrectly reading imaging studies.

e. Failing to treat conservatively or make a specialized shoe as the initial treatment.

f. Failing to prevent her post-operative fall and/or failing to provide other appropriate post-operative care and other services.

g. Abandoning her without arranging proper post-surgery treatment and other services.

16. As proximate results of the negligence of these employees Victoria developed infections requiring the amputation of her left foot. As additional proximate results of the negligence of these employees, Victoria required, and continues to require, medical and/or surgical treatment, with resulting expenses, has had and continues to have severe mental and physical pain and suffering, has a permanently impaired earning capacity, has lost income, is disfigured and has partially lost her enjoyment of life.

COUNT II

17. Victoria realleges paragraphs 1 through 16.

18. The Defendant, acting through the Indian Health Service, negligently trained, supervised, monitored and staffed appropriate personnel, and failed to establish appropriate policies and procedures, to prevent the negligence of its employees when treating Victoria and failed to possess, to apply, and to use the knowledge, skill and care of similar, reasonably well qualified health care providers, in similar circumstances, giving due consideration to the locality involved.

19. As proximate results of the negligence of the Defendant, Victoria suffered the injuries alleged in paragraph 16.

WHEREFORE, Victoria prays for judgment against Defendant United States of America on Counts I and II of her complaint, for damages as are reasonable and provable at trial not to exceed the amount claimed in Victoria's administrative claim, for costs and such other and further relief the Court deems just.

COUNT III

20. Mikaela realleges paragraphs 1 through 19.

21. As proximate results of the negligence of the Defendant and its employees, and the resulting injuries to Victoria, Mikaela has partially lost the society, comfort, companionship, guidance and relationship with Victoria.

WHEREFORE, Mikaela prays for judgment against Defendant United States of America on Count III of this complaint, for damages as are reasonable and provable at trial not to exceed the amount claimed in Mikaela's administrative claim, for costs and such other and further relief the Court deems just.

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